Filed 10/8/04 In re Mario C. CA5

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

In re MARIO C., A Person Coming Under The Juvenile Court Law.	
THE PEOPLE, Plaintiff and Respondent, v. MARIO C., Defendant and Appellant.	F044663 (Super. Ct. No. 505703) **O P I N I O N**

THE COURT*

APPEAL from a judgment of the Superior Court of Stanislaus County. Donald Shaver, Judge.

Victor S. Haltom, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Mary Jo Graves, Assistant Attorney General, Wanda Hill Rouzan and Virna L. DePaul, Deputy Attorneys General, for Plaintiff and Respondent.

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* Before Wiseman, Acting P.J., Cornell, J., and Gomes, J.

Appellant Mario C., a minor, admitted allegations that he committed attempted murder (Pen. Code, §§ 187; 664) and that in committing that offense, he personally used a dangerous and deadly weapon (§ 12022, subd. (b)) and inflicted great bodily injury (§ 12022.7). Following the subsequent disposition hearing, the court ordered appellant committed to the California Youth Authority (CYA) and declared the maximum period of physical confinement to be 108 months.

On appeal, appellant contends the court abused its discretion in ordering appellant committed to CYA. We will affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Instant Offense[1]

Appellant stabbed the victim, Joseph S. (Joseph) in the chest with a knife. Joseph was treated at a hospital and released. Appellant was 17 years of age at the time of the incident.

Joseph gave the following account. The day before the stabbing, appellant told Joseph he (appellant) wanted to buy some marijuana. Joseph knew some people who had some marijuana for sale and took appellant to buy the marijuana. The next night, at a party at Joseph's house, appellant complained about the quality of the marijuana he had purchased. At some point, some of the other persons at the party "were making fun of [appellant] because he looked as though he was twelve years old." Later, Joseph left the party and appellant followed him. Joseph "heard a knife click" and turned around. Appellant "said he was going to 'shank' him." Joseph entreated appellant to "talk," but appellant "said he could not do that and then stabbed [Joseph]."

Appellant gave the following account. The night before the stabbing he bought some marijuana from Joseph. At a party the next night, appellant indicated to some of

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[1] Information in this section is taken from the dispositional social study (DSS) prepared by the probation officer.

the partygoers that he was going to go buy some beer. A "female[] asked him how he was going to buy beer when he looked like he was twelve years old." Joseph laughed at this remark and began talking with the female "about [appellant] looking so young . . . ." This made appellant angry. He left the party and returned later. He "began arguing" with Joseph and "the two walked across the street and began fighting hand to hand." At one point, appellant noticed "another male" who was bigger than appellant "start[] across the street toward [appellant and Joseph]." Appellant "drew his knife in order to intimidate this male," at which point Joseph "hit [appellant] in the face." Appellant "forg[o]t he had the knife in his hand" and "tried to punch [Joseph] in the chest."

Appellant's girlfriend stated that Joseph punched appellant before appellant stabbed him. Two other witnesses indicated the stabbing was "sudden" and not preceded by any "fighting."

Psychological Evidence

Clinical psychologist Barry Olson, Ph. D., examined appellant and submitted a report indicating the following. Appellant "qualifies" for the following diagnoses: "major depressive disorder, severe, without psychotic features"; "adjustment disorder with mixed anxiety an depressed mood"; and "social anxiety disorder." He also "shows strong features of alcohol and marijuana dependence . . . ." Appellant reported to Dr. Olson that he "smoked marijuana several times per week"; "drank beer" approximately three times per week; and he "drank over 40 oz. of alcohol on the night of the offense." Appellant "seems to be a good candidate for treatment of emotional problems as well as drug dependence problems," and "he would clearly benefit from further education, including training in a trade."

At the disposition hearing, Dr. Olson testified to the following. "[I]f [appellant is] put into a high stress environment, that's going to impede his ability to be rehabilitated," whereas "if he's put into a lower stress environment in a less restrictive environment, . . . his ability to be rehabilitated" would "increase . . . ." Appellant had a "very severe"

"depressive reaction" to the "juvenile hall environment[.]" "[T]he more threatening the environment is to him, the more personal threat he feels[,] the more poorly he will function."

Report and Testimony of the Probation Officer

The probation officer, in the DSS, recommended commitment to CYA, stating that she "believes that the minor is a serious threat to the community and to anyone whom he believes to have wronged him." She also noted that at CYA, appellant "will receive intensive counseling, an education program as well as vocational skills."

At the disposition hearing, the probation officer testified to the following. She "contemplated a group home program" but "rejected" that alternative based on "the offense and the impulsivity of [the offense]" and the "fear [appellant] may commit the same offense without intensive treatment." The "number one factor" in recommending CYA commitment was "the offense." Also contributing to her recommendation were the "intensive counseling" and "structure" at CYA. Group home placement would not be effective in rehabilitating appellant because such placements are not as "structured" as CYA, and do not provide the "environment of intense psychological counseling" provided at CYA. CYA also "offer[s] help for minors with alcohol and drug dependency problems." The officer "did not contact specific group homes" nor did she "contact any other facilities or services to find out whether or not those services were appropriate for [appellant]."

DISCUSSION

Appellant contends the court abused its discretion in ordering appellant committed to CYA.

"To support a CYA commitment, it is required that there be evidence in the record demonstrating probable benefit to the minor, and evidence supporting a determination that less restrictive alternatives are ineffective or inappropriate." (*In re Teofilio A.* (1989) 210 Cal.App.3d 571, 576; accord, *In re Pedro M.* (2000) 81 Cal.App.4th 550, 556.) On

appeal, " 'The decision of the juvenile court may be reversed . . . only upon a showing that the court abused its discretion in committing a minor to CYA. [Citations.] An appellate court will not lightly substitute its decision for that rendered by the juvenile court. We must indulge all reasonable inferences to support the decision of the juvenile court and will not disturb its findings when there is substantial evidence to support them.' " (*In re Lorenza M.* (1989) 212 Cal.App.3d 49, 53; accord, *In re Asean D.* (1993) 14 Cal.App.4th 467, 473.)

In conducting a review for substantial evidence we must consider the whole record. (Cf. *Rivard v. Board of Pension Commissioners* (1985) 164 Cal.App.3d 405, 412.) We may not consider isolated bits of evidence while ignoring contradictory evidence. (*Ibid*.) Further, " '[i]n determining whether there was substantial evidence to support the commitment, we must examine the record presented at the disposition hearing to support the commitment in light of the purposes of the Juvenile Court Law. (§ [Welf. & Inst. Code,] § 200 et seq. . . .)' " (*In re Lorenza M.*, *supra*, 212 Cal.App.3d at p. 53.) "In 1984, the Legislature amended the statement of purpose found in section 202 of the Welfare and Institutions Code. It now recognizes punishment as a rehabilitative tool and emphasizes the protection and safety of the public.[2] [Citation.] The significance of this change in emphasis is that when we assess the record in light of the purposes of the Juvenile Court Law [citation] we evaluate the exercise of discretion with punishment and public safety and protection in mind." (*Id*. at pp. 57-58, fn. omitted; accord, *In re Jimmy P.* (1996) 50 Cal.App.4th 1679, 1684 ["[a] fundamental premise of delinquency

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2 Welfare and Institutions Code section 202 provides in relevant part: "Minors under the jurisdiction of the juvenile court as a consequence of delinquent conduct shall, in conformity with the interest of public safety and protection, receive care, treatment and guidance that is consistent with their best interest, that holds them accountable for their behavior, and that is appropriate for their circumstances. This guidance may include punishment that is consistent with the rehabilitative objectives of this chapter." (Welf. & Inst. Code, § 202, subd. (b).)

adjudication is that the court must focus on the dual concerns of the best interests of the minor and public protection"]; *In re Asean D.*, *supra*, 14 Cal.App.4th at p. 473 ["the 1984 amendments to the juvenile court law reflected an increased emphasis on punishment as a tool of rehabilitation, and a concern for the safety of the public"].) And while the juvenile court law contemplates a progressively restrictive and punitive series of dispositions, there is no absolute rule that the court may not impose a particular commitment until less restrictive placements have actually been attempted. (*In re Teofilio A., supra,* 210 Cal.App.3d at p. 577.)

When we consider the current purposes of the juvenile court law, we conclude the court did not abuse its discretion in committing appellant to CYA. First, the probation officer's testimony that the "intensive" counseling available at CYA is not available in a group home placement provides support for the conclusion that less restrictive alternatives would be inappropriate. Moreover, the armed assault upon which the instant adjudication is based provides ample support for the conclusion that appellant poses a danger to the public, and that factor, in turn, supports the conclusion that a disposition less restrictive than a CYA commitment would be ineffective and/or inappropriate because such a placement would not be adequate to hold appellant accountable for his actions and/or provide for the safety and protection of the public. (*In re Samuel B.* (1986) 184 Cal.App.3d 1100, 1104 [in determining disposition of juvenile offender, "gravity of the offense is always a consideration with other factors"], overruled on other grounds in *People v. Hernandez* (1988) 46 Cal.3d 194, 206, footnote 14.)

Appellant argues that substantial evidence does not support the conclusion that alternatives less restrictive than CYA would be ineffective or inappropriate because, he asserts, "[n]o information was presented at the dispositional hearing abut the unsuitability of alternatives other than CYA." This argument, however, ignores both the probation officer's testimony regarding the counseling available at CYA as well as the principle

that we must consider the safety and protection of the public in determining the proper disposition.

Substantial evidence also supports the conclusion that a CYA commitment would be of probable benefit to appellant. First, the written reports and testimony of the probation officer and Dr. Olson provide compelling evidence of the following: appellant has serious mental health problems, including drug and alcohol dependence; he could benefit from intensive psychological counseling and drug-and-alcohol-dependency related services; and such counseling and services are available at CYA facilities. Moreover, it is undisputed that, as Dr. Olson testified, appellant could benefit from further educational and vocational training, and that, as the probation officer indicated, such services are available at CYA. Finally, given that punishment is recognized as a "rehabilitative tool" in the statutory scheme governing appropriate dispositions for juvenile offenders, the seriousness of the instant offense also supports the conclusion that CYA commitment can benefit appellant by holding him accountable. (*In re Lorenza M.*, *supra*, 212 Cal.App.3d at p. 57.)

Appellant focuses on Dr. Olson's testimony that placement in a setting as restrictive as CYA would impede appellant's rehabilitation, and argues that this evidence precludes a finding that appellant could benefit from CYA commitment. This argument, however, urges us to consider a single piece of evidence out of context while ignoring the evidence summarized above. As indicated above, to do so would violate basic principles of appellate review.

Appellant also argues that in two ways the court failed to properly consider the evidence before it. First, appellant argues, "the record is devoid of any evidence that any meaningful consideration was given to . . . alternatives [less restrictive than CYA]." The record belies this claim. The probation officer specifically discussed group home placement and her reasons for not recommending such placement. Where, as here, the record demonstrates information regarding less restrictive alternatives was before the

court, the fact the judge does not state on the record his consideration of those alternatives and reasons for rejecting them will not result in reversal. (*In re Ricky H.* (1981) 30 Cal.3d 176, 184.)

Second, appellant suggests the court gave no consideration to whether a CYA commitment would benefit appellant. He bases this on the following statement by the court at the disposition hearing: "There are services available at CYA and *I don't want to get involved in the debate on how successful the services are or how good they are*. I know it's a continuing issue with CYA and with attorneys and with the courts as well . . . on whether or not there's a difference between reformatory discipline or rehabilitation." (Emphasis added.) In our view, however, appellant interprets the court's remarks far too broadly. We do not understand the court, in the passage quoted above, to be stating a categorical refusal to consider the question of benefit of CYA commitment.

Earlier in the hearing, defense counsel argued, based on Dr. Olson's testimony, that a CYA commitment would not be rehabilitatively effective because in that "restrictive" and "threatening" environment appellant would not "operate well." Counsel urged that appellant remain in juvenile hall where he could be treated by a "qualified therapist" to enable him to manage his "anger." Later, in its closing remarks, the court stressed that appellant committed an extremely serious, violent act that evinced "a significant problem with violence, not just with anger," and therefore, the court stated, "I don't think the options of group home or other way of dealing with it would be appropriate or would be effective."

In our view, the court's remarks at the disposition hearing, considered in context and in their entirety, indicate the court concluded that regardless of whether appellant would respond as well to treatment and services provided at CYA as to treatment or services available in some less restrictive setting, the circumstances of the instant offense demonstrated that appellant's mental health problems were so serious and that he presented such a danger to the public that only CYA commitment would be sufficient to

meet appellant's needs and the needs of the public. As demonstrated above, these findings are supported by the record. Therefore, the court did not abuse its discretion in ordering appellant committed to CYA.

DISPOSITION

The judgment is affirmed.